

insolvency of the defendant, is expressly denied, and therefore it is not necessary to discuss the question of the sufficiency of the allegations of the bill in that particular. It falls of course before the answer, there being no proof the one way or the other.

The bill, in the interrogatory part, calls upon the defendant to show all the goods and property of the firm, and all bonds, notes and other evidences of debts due to it, and this the answer by its exhibit No. 6, proposes to do, though the exhibition of the statement is accompanied with a sort of protest against the obligation of the defendant to do so. The paper, however, is not filed, and complaint is made because of this omission. My opinion is, that the complainant has a right to call for such a paper, and that the interrogatory is justified by the scope and object of the bill; but I do not see, that the failure to file the exhibit supports the charge of negligence in getting in the assets of the firm, or of waste or misapplication of those assets, or of danger to the complainant, resulting from the apprehended insolvency of the defendant, being the charges upon which the injunction and order for the receiver rests.

Upon the whole, taking this case as it is disclosed by bill, answer and exhibits, I do not think I should be justified in withholding the possession and actual control of these partnership effects, from the party to whose management they were confided by the agreement of the parties. He was selected by the complainant, to take possession of the fund and pay the debts, and wind up the affairs of the partnership, and under circumstances, a strong case must be made out, before he can be displaced. Such a case I thought was made out by the bill, but the answer has overthrown it, and the hand of the court must be removed.

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F. H. STOCKETT, for Complainant.

A. B. HAGNER, for Defendant.